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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola

Summary

Following a brief overview of the activities carried out by the mandate, the Special Rapporteur in the present report provides a thematic study on enforcing the accountability of States and businesses for preventing, mitigating and redressing contemporary forms of slavery in supply chains.

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Contents

		Page
I.	Introduction	3
II.	Activities of the mandate	3
III.	Enforcing State and business accountability for ending contemporary forms of slavery in supply chains	4
	A. International and regional normative framework for the duty of States to protect the right not to be subjected to slavery and slavery-like practices	5
	B. Causes and prevalence of contemporary forms of slavery in supply chains and examples of sectors at risk	6
	C. Steps taken by States to comply with their duty to ensure business accountability for ending contemporary forms of slavery in supply chains	9
	D. International framework for the responsibility of businesses to respect human rights	12
	E. Business and stakeholder initiatives to address contemporary forms of slavery in supply chains	14
	F. Corporate legal liability and access to remedies in cases involving contemporary forms of slavery in supply chains	16
	G. Some challenges and gaps to ensuring the accountability of States and businesses for contemporary forms of slavery in supply chains	18
IV.	Conclusion and recommendations	19

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 24/3, renewing the mandate of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, for three years. Following a brief overview of the activities carried out by the mandate holder, the Special Rapporteur, Urmila Bhoola, then focuses on one of the priority areas as identified in her first report to the Council (A/HRC/27/53): the duty of States and responsibility of business to eliminate contemporary forms of slavery from supply chains.

II. Activities of the mandate

2. The Special Rapporteur conducted official country visits to the Niger and Belgium from 11 to 21 November 2014 and from 19 and 26 February 2015, respectively, and her mission reports are issued as addenda to the present report. She would like to reiterate her gratitude to the Government of the Niger and the Government of Belgium for the cooperation extended before and during the visit and looks forward to continued cooperation on the issues pertaining to her mandate. The Special Rapporteur also wishes to thank all those States that have extended to her an invitation for a visit.

3. Since the presentation of her report to the Council in September 2014, the Special Rapporteur has held consultations with various stakeholders and participated in several events relevant to the mandate, with those most prominent presented below.

4. On 10 September 2014, she made concluding remarks at a Council side event entitled "Religions and Slavery: What role for religions in the fight against contemporary forms of slavery?", supported by the Permanent Observer Mission of the Holy See and the Permanent Observer Mission of the Order of Malta to the United Nations Office at Geneva.

5. On 1 December 2014, she delivered a keynote speech via video message at a conference entitled "Child Labour and Responsibility of European Consumers", organized in Vienna on the occasion of the International Day for the Abolition of Slavery by the Academic Council on the United Nations System.

6. From 22 to 23 January 2015, the Special Rapporteur participated in the Global Care Advocacy Workshop, held under the auspices of the Asia Pacific Forum on Women in Law and Development, the Institute for Development Studies and Action Aid International in Bangkok, where she chaired a session on the role of the mandate in eradicating domestic servitude.

7. From 17 to 19 March 2015, the Special Rapporteur participated at the second international legal conference on contemporary forms of slavery, organized at the University of Granada, Spain, and provided an inaugural address.

8. From 25 to 27 March 2015, she presented a paper on the role of the special procedures and human rights treaty bodies in addressing criminal justice for slavery at a policy retreat on "Eradicating modern slavery: What role for international criminal justice?", organized by the United Nations University, the Freedom Fund, the Permanent Mission of Liechtenstein to the United Nations and the Journal of International Criminal Justice in New York. Prior to that, from 22 to 24 March 2015, the Special Rapporteur held consultation meetings with the Alliance to End Slavery and Trafficking, and Humanity United in Washington, D.C. She also met with the International Corporate Accountability Roundtable, Human Rights First, the United States Agency for International Development and the Bureau of International Labor Affairs.

9. The Special Rapporteur also delivered a keynote speech at the fourth international seminar on contemporary forms of slave labour, which was held at the Universidade Estadual Paulista, Franca, Brazil, from 5 to 8 May 2015.

10. On 18 June 2015, the Special Rapporteur provided an introductory statement via video message at a Council side event on the role of the United Nations in combating the intersection of caste and gender in the area of forced and bonded labour, sponsored by Human Rights Watch, the International Movement Against All Forms of Discrimination and Racism, the Minority Rights Group, Anti-Slavery International and Franciscans International and organized in association with the International Dalit Solidarity Network.

11. In relation to the present thematic report, on 2 April 2015, the mandate holder organized an expert meeting on eradicating contemporary forms of slavery from supply chains in Geneva.[1] The meeting brought together more than 20 leading experts from international organizations, businesses, employer organizations, trade unions, non-governmental organizations, investor groups, foundations and academia. The Special Rapporteur wishes to thank the expert participants for their valuable contributions to the consultation and follow-up thereto.

12. While taking note of the previous initiatives undertaken by mandate holders relating to human rights violations in the context of supply chains,[2] in the present report, the Special Rapporteur focuses, inter alia, on legal and policy frameworks and stakeholder initiatives to ensure that businesses, in relation to their supply chains, respect human rights and eradicate contemporary forms of slavery, understood for the purpose of the present report primarily as forced labour, debt bondage and the worst forms of child labour, through increased human rights due diligence and effective remediation.

III. Enforcing State and business accountability for ending contemporary forms of slavery in supply chains

13. Following egregious violations of health and building safety standards that resulted in fatal accidents, such as the 2013 Rana Plaza factory collapse in Bangladesh leading to death of over 1,100 garment workers,[3] additional attention has been given to increasing State and corporate accountability for violations of human rights, including labour rights, in global value or supply chains.[4] In this context, the recent commitment by leaders of major global economies at the recent Group of Seven (G7) Summit to take action to address human rights in global supply chains is welcome and needs to be followed up by concrete actions.[5]

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[1] See www.ohchr.org/EN/Issues/Slavery/SRSlavery/Pages/ExpertMeeting2015.aspx.

[2] See, for example, A/67/261 and A/HRC/23/48/Add.4.

[3] These incidents continue to occur. The Asia Pacific Forum on Women, Law and Development called for increased business accountability after 72 women workers burned to death in factory fire in the Philippines in May 2015 (www.apwld.org).

[4] See *Ending Exploitation*, OSCE occasional paper series No.7, p.7. A United Nations Children's Fund report (Children's Rights and Business Principles, p. 9) explains that the value chain of a business "encompasses the activities that convert inputs into outputs by adding value. It includes entities with which the business has a direct or indirect business relationship and which either a) supply products or services that contribute to the business's own products or services [a 'supply chain'], or b) receive products or services from the business" (conventionally known as a production chain).

[5] See Leaders' Declaration, G7 Summit, 7–8 June 2015, pp. 4–6, https://www.g7germany.de/Content/EN/_Anlagen/G7/2015-06-08-g7-abschluss-eng_en.pdf?__blob=publicationFile&v=1. See also International Trade Union Confederation statement, available at www.ituc-csi.org/international-union-bodies-welcome.

A. International and regional normative framework for the duty of States to protect the right not to be subjected to slavery and slavery-like practices

14. The right to be free from slavery is a peremptory norm of international law from which no derogation is permitted and creates an *erga omnes* obligation on all States to protect this right. It is entrenched in the Slavery Convention of 1926 and has been incorporated into the Universal Declaration of Human Rights (art. 4), the International Covenant on Civil and Political Rights (art. 8 (1))[6] and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 11 (1)).

15. In the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, the protection of the right is extended to include "institutions and practices similar to slavery", i.e. debt bondage, serfdom, servile marriage and delivering a child for exploitation. Child economic exploitation and child hazardous labour are further prohibited in the International Covenant on Economic, Social and Cultural Rights (art. 10 (3)) and the Convention on the Rights of the Child (art. 32). In the International Labour Organization (ILO) Worst Forms of Child Labour Convention, 1999 (No. 182), the elimination of the worst forms of child labour is called for, which are defined as including all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, serfdom and forced or compulsory labour as well as hazardous work (art. 3).

16. While in the Slavery Convention reference is made to forced labour and States are called on to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery (art. 5), forced labour was not defined until the ILO Forced Labour Convention, 1930 (No. 29). The right not to be subjected to forced labour is now enshrined in a number of other international instruments, including in the ILO Abolition of Forced Labour Convention, 1957 (No. 105), the International Covenant on Civil and Political Rights (art. 8 (3)) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 11 (1)). In the ILO Declaration on Fundamental Principles and Rights at Work (1998), the elimination of all forms of forced or compulsory labour and the effective abolition of child labour is required.

17. The Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29),[7] outlines measures for prevention and elimination of forced labour and emphasizes the need for victim protection and access to appropriate and effective remedies, such as compensation. One of the preventive measures it sets out is "supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour" (art. 2 (e)). The non-binding ILO Recommendation 203,[8] providing practical guidance on the Protocol, while not referring specifically to supply chains, contains a provision on preventive measures, in which States are called on to provide guidance and support to employers and businesses to take effective measures to identify, prevent, mitigate and account for how they address the risks of forced or compulsory labour in their operations or in products, services or operations to which they may be directly linked (section 4 (j)). The

[6] In the Covenant and the Universal Declaration, it is stipulated that no one shall be held in servitude, although in neither of the instruments is that term defined.

[7] At the time of writing, the Protocol was not yet in force but had been ratified by the Niger on 14 May 2015.

[8] Recommendation on Supplementary Measures for the Effective Suppression of Forced Labour, adopted by the International Labour Conference at its 103rd session, Geneva, 11 June 2014.

Protocol is largely aligned with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (see below), although it is limited because, inter alia, it focuses only on forced labour and not on all human rights violations.

18. At the regional level, States' obligation to eradicate contemporary forms of slavery is enshrined in a number of human rights instruments. Under article 4 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, slavery, forced labour and servitude are prohibited. In article 5 of the African Charter on Human and Peoples' Rights, it is stated that, inter alia, slavery and slave trade shall be prohibited. The African Charter on the Rights and Welfare of the Child, in its article 15, enshrines the protection of children from all forms of economic exploitation and from performing any hazardous work. Slavery, involuntary servitude, slave trade and traffic in women, as well as forced labour, are prohibited under the American Convention on Human Rights (art. 6). In article 10 of the Arab Charter on Human Rights all forms of slavery, servitude and forced labour are prohibited.

B. Causes and prevalence of contemporary forms of slavery in supply chains and examples of sectors at risk

19. Globalization has created unprecedented opportunities for corporations to extend their operations across national borders, including to developing countries, in order to source the cheapest products and maximize profit. The demand for cheap labour meets a ready supply of workers from vulnerable groups: indigenous people, minorities, those considered to be from the "lowest castes" and migrants, especially those in an irregular situation. Women workers are particularly vulnerable to exploitation in certain sectors given the nexus of gender discrimination and inequality.

20. Global enterprises with supply chains that are long and complex and involve complicated networks of subsidiaries, franchisees, suppliers, contractors and subcontractors are more likely to be faced with challenges related to contemporary forms of slavery. While the first tier of supply chains is less susceptible to the risk of contemporary forms of slavery, the lower levels have been shown to be at risk of products or raw materials being sourced from home-based or small workshops in the informal economy and made in situations of debt bondage, forced labour or the worst forms of child labour.

21. Although more research into the scope and prevalence of contemporary forms of slavery is required, various small-scale studies (for example, on the garment, conflict mineral, seafood, sporting goods, handmade carpet and tea industries) show that products from the informal sector enter global supply chains and are also part of domestic economies in the developing world, often in the most labour-intensive sectors.[9] Human rights violations in the sourcing of conflict minerals, for example, have received much attention,[10] but more research is required to identify the scope and prevalence of contemporary forms of slavery in supply chains of specific commodities and particular sectors. The sectors

[9] See, for example, FairFood International, "Caught in a Trap – the story of poverty behind Asian shrimp sold in European supermarkets" (2015). Available at www.fairfood.org/wp-content/uploads/2015/04/Caught-in-a-trap.pdf.

[10] For example, in relation to the sourcing of conflict minerals, where the public furore resulted in the Organization for Economic Cooperation and Development (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (adopted in May 2011 and amended in July 2012).

mentioned in the present report are therefore not meant to be a comprehensive list, but an indication of where contemporary forms of slavery have been reported to occur.[11]

22. According to ILO data from 2012, 5.5 million of the 20.9 million of persons in forced labour are children[12] and an estimated 5–15 per cent of those are working in supply chains, with the figure significantly higher if domestic supply chains are also taken into account. The lowest tiers in the informal economy are particularly at risk of involving the worst forms of child labour. In 2012, the number of children involved in hazardous work that directly endangers their health, safety and moral development, often understood as a proxy for the worst forms of child labour, was said to be 85 million in absolute terms.[13] While reliable data on those sectors most susceptible to using such work are difficult to obtain, cases of the worst forms of child labour were found in sectors that correspond to those with a high risk of contemporary forms of slavery occurring in supply chains, including agriculture (i.e., farming of raw materials such as sugar, cotton, cocoa and tobacco), construction, mining and quarrying, and garments and textiles.[14]

23. In agriculture, contemporary forms of slavery have reportedly occurred in many countries, involving crops such as sugar cane, cut flowers, fruit and vegetables, tropical nuts and commodities, for example, palm oil, cotton,[15] cocoa, tobacco and beef.[16] Production in the sector often relies on temporary or migrant labour and is characterized by complex contracting and subcontracting chains, as well as smallholder farming in some cases. Much of the work on remote farms and plantations is typified by excessive working hours, lack of compliance with labour laws, weak or non-existent labour inspections and corruption. Competition to produce at the lowest cost enhances the risk of contemporary forms of slavery being involved in agriculture, especially debt bondage in impoverished rural communities and among vulnerable categories of workers, such as indigenous people, minorities, migrants, women and children.

24. In the garment and textile sectors, reports indicate a significant risk of contemporary forms of slavery occurring in the complex subcontracting that characterizes the industry in many parts of the world, including the sometimes home-based and informal workshops operating on the margins of the formal economy. Subcontractors such as these are often overlooked both by labour inspections and due diligence systems, making workers in these supply chains particularly vulnerable to exploitation given the quick turnaround time to meet orders from global fashion brands and consumer needs. Contemporary forms of slavery have often been cited as occurring in global supply chains of international brands.[17]

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[11] A comprehensive database of reported cases, including companies' responses, can be found on the Business and Human Rights Resource Centre website (www.business-humanrights.org).

[12] See ILO, "Global Estimate of Forced Labour: Results and methodology" (2012).

[13] ILO, "Marking Progress against Child Labour: Global Estimates and Trends 2000–2012" (2013), pp. 3 and 32.

[14] ILO, "Implementing the Roadmap for Achieving the Elimination of the Worst Forms of Child Labour by 2016: a training guide for policymakers" (2013), p. 9.

[15] Various advocacy initiatives have addressed forced labour in cotton-picking in Uzbekistan. See, for example, Anti-Slavery International (www.antislavery.org); the Uzbek-German Forum for Human Rights, "The Government's Riches, the People's Burden: Human Rights Violations in Uzbekistan's 2014 Cotton Harvest" (2015) (www.antislavery.org/includes/documents/cm_docs/2015/2/2014_cotton_harvest_report.pdf); and the OECD, "Annual Report on the OECD Guidelines for Multinational Enterprises 2012" on examples of complaints regarding sourcing of Uzbek cotton made to national contact points, and how these were addressed (http://dx.doi.org/10.1787/mne-2012-en).

[16] For example, www.verite.org/Commodities.

[17] See, for example, Centre for Research on Multinational Corporations and India Committee of the Netherlands, "Flawed Fabrics: the abuse of girls and women workers in the South Indian textile

25. Despite the various measures taken to eradicate the worst forms of child labour from the carpet industry, these forms were reported to continue to exist in handmade carpet production units in South Asia, in which carpets are produced for export mainly to the United States of America.[18] Various studies have reported the existence of contemporary forms of slavery and labour exploitation in the construction industry[19] and forced labour in the manufacturing of electronic goods has also been the subject of recent research.[20]

26. The food processing and packaging industry has been frequently implicated in labour exploitation that can amount to contemporary forms of slavery, particularly in fish and seafood processing in parts of South-East Asia.[21] Reports have been made involving workers enslaved on fishing vessels in the region.[22]

27. The mining[23] and forestry[24] sectors have also been cited in reports on forced labour in supply chains. Here risks include vulnerability arising from the isolated nature of

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industry" (2014) (www.indianet.nl/FlawedFabrics.html); Anti-Slavery International, "Slavery on the high street: forced labour in the manufacture of garments for international brands" (2012) (www.antislavery.org/includes/documents/cm_docs/2012/s/1_slavery_on_the_high_street_june_2012_final.pdf).

[18] See Siddharth Kara, *Tainted carpets Slavery and Child Labor in India's Hand-Made Carpet Sector* (2014, Harvard University).

[19] See, for example, Human Rights Watch, "Migrant Workers' Rights on Saadiyat Island in the United Arab Emirates" (2015) (www.hrw.org/sites/default/files/reports/uae0215_ForUploadR.pdf); Business and Human Rights Centre, "Labour rights and the Qatar World Cup 2022" (http://business-humanrights.org/en/major-sporting-events/labour-rights-and-the-qatar-world-cup-2022); and Human Rights Watch, "Building a Better World Cup Protecting Migrant Workers in Qatar Ahead of FIFA 2022" (2012) (www.hrw.org/reports/2012/06/12/building-better-world-cup).

[20] ILO referred to the response of a major United States electronics company to allegations of forced labour in factories in China in its publication *Combating Forced Labour: A Handbook for Employers & Business*, Good Practice Case Studies, Part 7 (2008), pp. 5–7. See also China Labor Watch, "Is Samsung Infringing Upon Apple's Patent to Bully Workers?" (2012) (www.chinalaborwatch.org/upfile/2012_9_4/Samsung%20Report%200904-v3.pdf) and "Beyond Foxconn: Deplorable Working Conditions Characterize Apple's Entire Supply Chain" (2012) (www.chinalaborwatch.org/upfile/2012_8_13/2012627-5.pdf); and Verité, "Forced Labor in the Production of Electronic Goods in Malaysia: A Comprehensive Study of Scope and Characteristics" (2014) (www.verite.org/sites/default/files/images/VeriteForcedLaborMalaysian Electronics2014.pdf).

[21] See, for example, ILO, *Caught at sea: forced labour and trafficking in fisheries* (2013) (www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_214472.pdf); Environmental Justice Foundation, *Slavery at Sea: the continued plight of trafficked migrants in Thailand's fishing industry* (2014) (http://ejfoundation.org/sites/default/files/public/EJF_Slavery-at-Sea_report_2014_web-ok.pdf).

[22] Robin McDowell and others, "Slavery taints global supply of seafood: AP investigation", *Washington Times*, 25 March 2015 (www.washingtontimes.com/news/2015/mar/25/slavery-taints-global-supply-seafood).

[23] See A/HRC/18/30. See also Human Rights Watch, "Precious Metal, Cheap Labor – Child Labor and Corporate Responsibility in Ghana's Artisanal Gold Mines" (2015) (www.hrw.org/sites/default/files/reports/ghana0515_forinsertLR2.pdf); *Stop Child Labour and India Committee of the Netherlands, Rock Bottom: modern slavery and child labour in South Indian granite quarries* (2015) (www.indianet.nl/RockBottom.html); Verité, "Risk Analysis of Indicators of Forced Labor and Human Trafficking in Illegal Gold Mining in Peru" (2013) (www.verite.org/sites/default/files/images/IndicatorsofForcedLaborinGoldMininginPeru.pdf); and ILO, "Buried in Bricks: A rapid assessment of bonded labour in brick kilns in Afghanistan" (2012) (www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_172671.pdf).

[24] For example, www.verite.org/Commodities/Timber.

workplaces, the role of private security firms, the presence of organized criminals attracted by high value commodities such as gold or other minerals, and the growth of illegal, unlicensed or unregulated mines and forestry operations that benefit from weak regulation and law enforcement.

C. Steps taken by States to comply with their duty to ensure business accountability for ending contemporary forms of slavery in supply chains

28. States have an obligation under international human rights law to respect, protect and fulfil the human rights of all persons in their territory and/or jurisdiction. This includes the duty to protect individuals and groups against human rights abuses committed by private actors, such as business enterprises. The Human Rights Committee, in paragraph 8 of its general comment No. 31 (2004) on the nature of general legal obligations on States Parties to the Covenant, stipulates the need for States to exercise due diligence to prevent, punish, investigate or redress the harm caused by private persons or entities.

29. The Guiding Principles on Business and Human Rights,[25] unanimously endorsed by the Human Rights Council in 2011, validate the duty of States to protect against and redress business-related human rights harms, and it is stipulated therein that this is to be done through effective policies, legislation, regulations and adjudication (principle 1). State duties include setting out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations (principle 2).

30. In the context of contemporary forms of slavery, this duty to protect could translate into a smart mix of measures to ensure that businesses engage in their responsibility to respect human rights, including through undertaking human rights due diligence throughout their supply chains and remediating the adverse impact of their operations on human rights. At the very minimum, States should ensure that businesses realize the implications of purchasing products or services that have in any way been linked to forced labour or other contemporary forms of slavery. To date, States have adopted diverse approaches to addressing this issue, which include ensuring criminal, civil and tort liability for business-related human rights violations, setting up mechanisms to regulate such compliance in trade and consumer protection and addressing it in government procurement. Disclosure and transparency can also feature as legal obligations rather than being limited to voluntary corporate social responsibility initiatives.[26]

31. In the most recent development, in March 2015, the Parliament of the United Kingdom passed the Modern Slavery Bill, which includes a specific part on transparency in supply chains and imposes obligations on businesses to disclose the steps, if any, they are taking to address contemporary forms of slavery in supply chains.[27] The duties imposed in

[25] In the Guiding Principles on Business and Human Rights, which operationalize Protect, Respect and Remedy: a Framework for Business and Human Rights, the different roles and responsibilities of States (first pillar) and businesses (second pillar) to address their impact on human rights and the access to remedy for business-related human rights abuse (third pillar) are clarified.

[26] For a detailed analysis of different regulatory frameworks, see International Corporate Accountability Roundtable report, "Human Rights Due Diligence: The role of States" (2012) (http://icar.ngo/wp-content/uploads/2012/12/Human-Rights-Due-Diligence-The-Role-of-States.pdf).

[27] It is widely acknowledged that the provisions for transparency in supply chains were inserted largely owing to advocacy conducted by the Ethical Trading Initiative, a multi-stakeholder partnership of businesses, trade unions and non-governmental organizations, covering over 70 companies and in 2015 reaching nearly 10 million workers across the globe.

the Modern Slavery Act[28] can be enforced in civil proceedings undertaken by the authorities. Under the Act, company disclosures must be signed by a company director, creating clear accountability. Regulations are currently being prepared to operationalize the provisions for transparency, based on consultations. In some of the submissions for the consultations, it was suggested that a threshold be introduced that would bring even small companies within the ambit of the Act, which would require companies to reveal business relationships in the lower tiers of their supply chains and set clear criteria for disclosures in their reports; it was also suggested that reports be featured on a government website. The Act has, however, received criticism for creating a loophole that allows United Kingdom-based companies to effectively "hide" their supply chains if the goods produced do not enter the United Kingdom.[29]

32. In the context of transparency, the most often cited legislation is the California Transparency in Supply Chains Act of 2010,[30] which came into effect on 1 January 2012. Under the Act, all retailers and manufacturers with annual global revenues of over US$100 million doing business in California, whether or not they have their headquarters there, are required to disclose their efforts to eradicate slavery and human trafficking from their direct supply chains for tangible goods offered for sale. While an important development, the law is judged to be insufficient because it only requires companies to report on what, if anything, they are doing to address contemporary forms of slavery, using five specific categories: verification, auditing, certification, internal accountability and training, and no specific preventive actions need to be taken nor does it call to improve conditions for those vulnerable to abuse in the supply chain.[31]

33. In 2014, the draft Business Supply Chain Transparency on Trafficking and Slavery Act of 2014[32] was introduced into the United States Congress. The Act, not yet adopted, contains, inter alia, reporting requirements for businesses relating to the disclosure of conditions amounting to forced labour, slavery, human trafficking and the worst forms of child labour in supply chains. At the time of writing the present report, a draft law on business human rights due diligence in supply chains was pending before the Senate in France,[33] after having been adopted by the National Assembly in the first reading in March 2015.

34. The Brazilian Ministry of Labour maintains a record of people and corporations found to be using slave labour, which has been termed the "dirty list", established by ministerial decree of 2003. The database was used by public and private companies that applied commercial and financial sanctions. The list grew to include 52 employers of slave labourers in 2003 to 609 as of July 2014. However, in December 2014, the Supreme Court granted an injunction to an association of construction companies, suspending the "dirty list". To date, attorneys from the Federal Government have not been able to re-establish the database. Another challenge to the list was launched following the Labour Prosecutor's

[28] Available at www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf.

[29] See Anti-Slavery International, www.antislavery.org/english/press_and_news/news_and_press_releases_2009/analysis_of_modern_slavery_act.aspx.

[30] Available at www.state.gov/documents/organization/164934.pdf.

[31] See Verité, "Compliance is Not Enough: best practices in responding to the California Transparency in Supply Chains Act" (2011) (www.verite.org/sites/default/files/VTE_WhitePaper_California_Bill657FINAL5.pdf), and the Alliance to End Slavery and Trafficking, "Beyond SB 657: How Businesses Can Meet and Exceed California's Requirement to Prevent Forced Labour in Supply Chains" (2013) (www.genderprinciples.org/resource_files/ATEST_Report_Beyond_SB657_final.pdf).

[32] Available at https://www.congress.gov/113/bills/hr4842/BILLS-113hr4842ih.pdf.

[33] Text No. 376 (2014–2015), available at www.senat.fr/leg/ppl14-376.pdf.

Office finding that Zara Brazil (part of global brand Inditex) had directive power over the supply chain[34] and litigation has ensued which includes a challenge to the constitutionality of the "dirty list". Also in Brazil, the Sao Paulo State Law to Combat Slave Labour, also known as the Bezerra Law, seeks to regulate the disclosure of slave labour.[35]

35. At the United States federal level, under the Trafficking Victims Protection Reauthorization Act of 2005, the Department of Labor's Bureau of International Labour Affairs is mandated to, inter alia, create and maintain a List of Goods Produced with Child Labor or Forced Labor.[36] In addition, a list of products using forced or indentured child labour is also produced by the Bureau of International Labour Affairs and intended to ensure that United States federal agencies do not procure goods made by this labour.[37] Under the Trade and Development Act of 2000,[38] the Secretary of Labor is mandated to issue beneficiary country initiatives to implement their international commitments to eliminate the worst forms of child labour. These transparency initiatives primarily provide information for government procurement but also assist investors and consumers.

36. Executive Order 13627 on strengthening protections against trafficking in persons in federal contracts, issued in September 2012, targets contemporary forms of slavery in government procurement.[39] Under the Executive Order, federal contractors, subcontractors, and their employees are prohibited from engaging in misleading or fraudulent recruitment practices; charging employees recruitment fees; and destroying, concealing, confiscating or otherwise denying an employee access to their identity documents, such as passports or drivers' licences (section 2 (1)(A)(i)–(iii)). Under the Order, contractors and subcontractors are further required to agree to fully cooperate, by contractual agreement, in providing reasonable access to enforcement agencies to conduct audits, investigations and other actions to assess compliance with the Trafficking Victims Protection Act of 2000 (section 2 (1)(B)). The Federal Acquisition Regulation[40] that needed to be updated following the Executive Order and related requirements in the Ending Trafficking in Government Contracting Act (set forth in the National Defense Authorization Act for 2013)[41] entered into force in March 2015, hence it is difficult to comment on its impact in practice.

37. The United States Tariff Act of 1930 is also relevant to supply chains and goods produced using forced labour. In section 1307 of the Tariff Act, the import of goods produced with prison labour and forced labour is specifically prohibited: "All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the

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[34] See Repórter Brasil and SOMO, *From Moral responsibility to legal liability — modern day slavery conditions in the glo[illegible]al garment supply chain and the need to strengthen regulatory frameworks: the case of Inditex-Zara in Brazil* (2015) (www.cleanclothes.org/resources/national-cccs/from-moral-responsibility-to-legal-liability).

[35] Law No. 14.946/2013, available at www.al.sp.gov.br/repositorio/legislacao/lei/2013/lei-14946-28.01.2013.html.

[36] United States Department of Labor, list of goods produced with child labor or forced labor, available at www.dol.gov/ilab/reports/child-labor/list-of-goods/.

[37] Under Executive Order No. 13126 of 1999 on prohibition of acquisition of products produced by forced or indentured child labor and available at www.dol.gov/ilab/reports/child-labor/list-of-products/index-country.htm.

[38] Available at www.dol.gov/ilab/about/laws/pdf/20000518TDA.pdf.

[39] See www.whitehouse.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe.

[40] See https://www.acquisition.gov/sites/default/files/current/far/pdf/FAR.pdf.

[41] See www.gpo.gov/fdsys/pkg/BILLS-112hr4310enr/pdf/BILLS-112hr4310enr.pdf.

importation thereof is hereby prohibited". The terms forced labour or/and indentured labour include forced or indentured child labour.

38. Restrictions on trade that has negative human rights impact is particularly relevant to addressing slavery and slavery-like practices in supply chains. The Alliance to End Slavery and Trafficking, and Humanity United have recently supported initiatives in the United States Congress to strengthen human rights provisions in trade agreements. This followed a proposed amendment to the Trade Act of 2015[42] to prohibit an international trade agreement from receiving fast-track benefits if it involves a country that is not meeting minimum standards in combating human trafficking.[43]

39. Although the assessment of the efficacy of these legislative developments in practice is beyond the scope of the present report, they provide a snapshot of the issues that impact on the challenge of States to regulate the human rights conduct of businesses operating supply chains outside domestic economies. In these cases, risks and violations are often off-shored, resulting in lack of redress under domestic laws, but having significant impact on the human rights situation in developing economies. This results in challenges to effectively address business-related human rights harms in supply chains and requires sustainable and holistic solutions that involve all stakeholders in the supply chain.

D. International framework for the responsibility of businesses to respect human rights

40. In the Universal Declaration of Human Rights, every individual and every organ of society is required to strive to contribute to the universal and effective recognition and observance of human rights for all. While it is commonly accepted that under international human rights law businesses have a responsibility to respect human rights, there is as yet no international legal duty for them to protect human rights. Human rights due diligence, i.e. a continuous process of identifying and addressing the human rights impact of a company across its operations and products, and throughout its supplier and business partner networks,[44] is therefore the primary standard used to assess business compliance with its human rights responsibilities.

41. Under principle 12, of the Guiding Principles on Business and Human Rights, which in their second pillar clarify the business responsibility to respect human rights, this responsibility applies to all internationally recognized human rights, understood, at a minimum, as those expressed in the International Bill of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work. All businesses are required to avoid causing or contributing to adverse human rights impacts through their own activities, address such impacts when they occur and seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts (principle 13). Under principle 12 in conjunction with principle 13 (which refers to "business relationships" that are understood to include relationships with business partners, entities in the value chain, and any other non-State or State entity directly linked to its business operations, products or services, i.e. entities in its supply chain beyond the first tier and indirect as well as direct

[42] Available at https://www.congress.gov/bill/114th-congress/house-bill/1314/text.

[43] See David Abramowitz, "Trade legislation can help stop human trafficking", *The Hill*, 10 June 2015 (http://thehill.com/blogs/pundits-blog/international/244538-trade-legislation-can-help-stop-human-trafficking).

[44] See *Frequently asked questions about the Guiding Principles on Business and Human Rights* (United Nations publication, Sales No. E.14.XIV.6), p. 27. Available from www.ohchr.org/Documents/Publications/FAQ_PrinciplesBussinessHR.pdf.

business relationships),[45] it is made clear that there is a responsibility on the part of businesses to effectively address contemporary forms of slavery in their supply chains.

42. In order to meet their responsibility to respect human rights, businesses need to, as per principle 16, adopt human rights policy statements, the criteria for which are set out in this principle. The responsibility to respect also requires ongoing human rights due diligence to identify, prevent, mitigate and account for human rights impacts (principles 17–21). The Guiding Principles on Business and Human Rights also state that, where businesses identify that they have caused or contributed to adverse human rights impacts, they should have processes in place to enable remediation (principle 15).[46]

43. The Guiding Principles on Business and Human Rights provide conceptual and operational clarity for the two human rights principles of the Global Compact Initiative,[47] a broad-based multi-stakeholder initiative addressed to business, launched in 2000. The Global Compact brings together Governments, employers, civil society groups and trade unions, as well as other stakeholders, on the basis of 10 universally accepted principles of human rights, labour, environment and the fight against corruption. The principles are drawn from key United Nations and ILO standards, with contemporary forms of slavery figuring prominently among the categories of human rights and labour rights (principles 1, 2, 4 and 5). Since the Global Compact's launch, more than 12,000 participants, including over 8,000 businesses from 145 countries, have joined. The high number of the initiative's participants is commendable, but the most obvious gap of Global Compact is in terms of a follow-up mechanism for monitoring and implementation, since businesses need only to communicate annually on progress made in implementing the 10 principles.

44. The first initiatives at the international level to address conduct of businesses emerged in the 1970s. In 1977, ILO adopted the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (subsequently amended in 2000 and 2006). It commits Governments, employers' and workers' organizations and multinational enterprises to respecting the Universal Declaration of Human Rights and the International Covenants adopted by the General Assembly. In 2014, the ILO Governing Body adopted an implementation strategy for a new follow-up mechanism to the Declaration[48] (which is not yet aligned with the Guiding Principles on Business and Human Rights) envisaging public-private initiatives and technical cooperation, as well as awareness-raising, capacity-building, country-level support, research and information-gathering.

45. The Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises[49] were adopted in 1976 and updated five times, most recently in May 2011 to include a new chapter on human rights and business consistent with the Guiding Principles on Business and Human Rights. In the Guidelines, explicit reference is made to the responsibilities of multinational enterprises in relation to their supply chains.[50] A system of national contact points — a non-judicial mechanism that the adhering countries are obliged to set up — are established thereunder. National contact points contribute to the

[45] See ibid., p. 32.

[46] See section F.

[47] For more information, see www.unglobalcompact.org/. See also OHCHR, "The United Nations Guiding Principles on Business and Human Rights: Relationship to United Nations Global Compact Commitments – July 2011 (Updated June 2014)" (https://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/GPs_GC%20note.pdf).

[48] GB.320/POL/10, 14 February 2014. Available at www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_236168.pdf.

[49] One of four instruments of the 1976 OECD Declaration on International Investment and Multinational Enterprises. See http://mneguidelines.oecd.org/text/.

[50] See commentary on general policies contained in the OECD Guidelines for Multinational Enterprises, para. 10 (www.oecd.org/daf/inv/mne/48004323.pdf).

resolution of issues that arise from alleged non-observance of the Guidelines (so called specific instances mechanism).[51] In dealing with specific instances, which are not legal cases, national contact points must make an initial assessment to determine if the issues raised merit further examination, assist in resolving the instances through offering good offices, and make the results of the procedure publicly available. Despite the value of this grievance mechanism, which is accessible to any interested party, the national contact point system has been criticized by civil society on multiple counts and specific recommendations have been provided to strengthen it.[52] Business compliance with other guidelines, for example the Dhaka Principles for Migration with Dignity that relate to reducing exploitation from the moment of the recruitment process is critical to reducing the incidence of forced labour and other contemporary forms of slavery at all levels of supply chains.[53]

E. Business and stakeholder initiatives to address contemporary forms of slavery in supply chains

46. Global brands and other transnational corporations operating complex supply chains that span multiple jurisdictions have increasingly adopted voluntary codes of conduct to address contemporary forms of slavery in their operations, as well as those of their suppliers, prompted mainly by reputational risk. The voluntary codes cover a wide variety of issues, from social and environmental to human rights and anti-corruption. Policies that clearly prohibit forced labour are now commonplace in codes across companies of different sizes and operating in different regions and sectors. A key recent innovation is the development of policies that address recruitment and hiring in labour supply chains by banning private employment or recruitment agencies supplying workers to facilities in their supply chains from charging recruitment fees to those workers.[54]

47. Despite their important role in complementing the normative framework, voluntary codes of conduct are often bald statements without any independent monitoring mechanisms and leave numerous gaps in protection if they do not apply to all entities, especially informal sector and home-based suppliers and subcontractors. However, an increasing number of steps are being taken to implement voluntary codes, involving a diverse set of strategies, typically starting with some form of compliance assessment conducted at workplace level in businesses' supply chains. These are commonly called "social audits" and frequently address other standards in addition to human rights issues, depending on the codes upon which they are based.

48. While businesses continue to rely on social audits as a key element of their human rights due diligence programmes and to assess their own facilities and those of their business partners, many believe that auditing has had a limited impact on identifying and eliminating contemporary forms of slavery from supply chains. New strategies are therefore required that move beyond auditing and include proactive independent investigations and robust independent verification, which incorporate consultations with workers with due

[51] To date, approximately 300 instances have been addressed by national contact points, covering a range of issues, including human rights, employment and industrial relations. See http://mneguidelines.oecd.org/database/.

[52] See, for example, OECD Watch, *Remedy Remains Rare – An analysis of 15 years of NCP cases and their contribution to improve access to remedy for victims of corporate misconduct* (2015) (http://oecdwatch.org/publications-en/Publication_4201).

[53] See also, for example, the ILO Fair Recruitment Initiative and the International Organization for Migration initiative on ethical recruitment.

[54] For example, the Electronics Industry Citizenship Coalition has adopted a "no fees" policy for its members.

regard to confidentiality and privacy. Consumer and trade union advocacy can play an important role in ensuring the involvement of workers and their representatives in such processes. Largely as a result of stakeholder criticism, some companies have already piloted new protocols that prioritize the confidential testimony of workers and attempted to develop more robust investigative techniques, sometimes in partnership with civil society.[55]

49. Company-level grievance mechanisms, which range from complaints boxes to telephone hotlines, are being created to identify human rights violations and other forms of abuse. Their effectiveness is often dependent on information exchange between business peers and companies often rely on multi-stakeholder initiatives to develop efficient systems.

50. Another strategy in tackling the risk of contemporary forms of slavery in supply chains relates to transparency and reporting,[56] on the one hand, and traceability, on the other. In both cases, pressure from regulators, civil society actors and investors has pushed companies not only to disclose information about business relationships in supply chains, but to implement measures to track products and materials from finished goods to the commodities level to promote "clean" production at every step of the way. However, opinion remains divided on the effectiveness of these initiatives in improving conditions for workers and, in particular, for addressing contemporary forms of slavery.

51. Certification has arisen as another key approach from increased consumer, trade union and other civil society awareness. The most well-known is the Fairtrade Mark, which can be found on a wide range of products — over 27,000 — and certifies that those products meet internationally agreed Fairtrade Standards, including those relating to child labour and labour rights.[57] In another example, the GoodWeave[58] certification label provides assurance that no child labour was used in the manufacture of rugs.

52. Given the complexity and span of supply chains, identifying and eradicating contemporary forms of slavery can be successful only if sustainable and effective multi-stakeholder partnerships and initiatives involving the authorities, businesses, trade unions, consumers and other stakeholders, each acting from their own areas of expertise to enforce mutually agreed goals, are formed. Such initiatives are frequently international in scope, given the breadth of transnational operations. Some focus on a single sector, industry or commodity,[59] while others are cross-sectoral.[60] Others focus on a single issue like child or forced labour,[61] while many typically address a cross-section of labour and human rights issues alongside the environment and general principles of ethical business.[62]

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[55] For example, Apple, Hewlett Packard, Patagonia, Gap Inc., Coca Cola, the Arcadia Group and Philip Morris International.

[56] Voluntary commitments to transparency are, for example, required by companies that use the framework established by the Global Reporting Initiative.

[57] www.fairtrade.net.

[58] www.goodweave.org.

[59] For example, the Fair Wear Foundation or Fair Labour Association, both of which address apparel only.

[60] Such as Social Accountability International and the Ethical Trading Initiative. The latter developed a Base Code guiding its members to comply with ILO standards (e.g. fair recruitment, humane working conditions, decent work and a living wage) as a means of preventing forced labour and other contemporary forms of slavery (see www.ethicaltrade.org/eti-base-code).

[61] Including the Eliminating Child Labour in Tobacco Growing Foundation and the International Cocoa Initiative. Both participate in the Child Labour Platform, a thematic membership-based work stream of the Human Rights and Labour Working Group of the Global Compact, opened to companies, other United Nations agencies, trade unions, business associations and other relevant stakeholders, and focused on child labour, particularly in supply chains.

[62] For example, the Roundtable on Sustainable Palm Oil and the Responsible Jewellery Council.

53. An example of good practice is the multi-stakeholder public-private platform Project Issara[63] initiated by Anti-Slavery International to tackle modern slavery in South-East Asia, with an initial focus on forced labour in the export-oriented industries of Thailand that affect global supply chains. Another well-known example of a multi-stakeholder private-public initiative is the National Pact for the Eradication of Slave Labour in Brazil, which brings companies together to combat slave labour with the assistance of ILO, non-governmental organizations (including Repórter Brasil and Ethos) and support from the Government. Over 400 companies and trade associations had signed the pact as of May 2014, including large companies such as Walmart Brazil, committing not to do business with people and companies involved with slave labour.[64]

54. Multi-stakeholder initiatives help to address questions of credibility and effectiveness that have surrounded business-only and corporate social responsibility strategies. They offer a more inclusive model as they involve various stakeholders and thus provide a long-term solution to addressing risks to contemporary forms of slavery in supply chains. Those multi-stakeholder platforms that are genuinely premised on social partnership and involve trade unions have the additional benefit that they can ensure collaboration across a number of initiatives including public-policy advocacy and grievance resolution.

55. Investors have also begun to play an increasing role in requiring human rights due diligence.[65] Furthermore, civil society actors have been at the forefront of challenges to contemporary forms of slavery in supply chains[66] and civil society "naming and shaming" of companies has resulted in some businesses responding positively by adopting or adjusting their policies and practices.[67] A welcome initiative in the reporting context is the recently launched United Nations Guiding Principles Reporting Framework, which provides guidance for companies to report on how they respect human rights.[68]

F. Corporate legal liability and access to remedies in cases involving contemporary forms of slavery in supply chains

56. States have a duty under international human rights law to ensure the right to a remedy, including equal and effective access to justice and adequate, effective and prompt reparations for human rights violations. For victims of gross violations of international human rights law, such as slavery and slavery-like practices, full and effective reparation may take the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[69] In the third pillar of the Guiding Principles on Business and

[63] www.projectissara.org.

[64] For signatories, see www.pactonacional.com.br.

[65] The Interfaith Centre on Corporate Responsibility "No fees" Initiative targets the risk of debt bondage faced by migrant workers resulting from fee-charging for recruitment and employment services and uses the strength and influence of investors to target 12 companies in the palm oil and seafood sectors to clearly demonstrate their commitment to respect human rights (www.iccr.org/no-fees-initiative).

[66] A well-known example is the Coalition of Immokalee Workers, which mobilized consumers in the Campaign for Fair Food and led to successful prosecutions for slavery on tomato farms in the United States.

[67] For example, after a report by the Fair Labor Association that Nestlé was using child labour in its cocoa supply chain, the company strengthened its Nestlé Cocoa Plan, adopting all recommendations. (The case is cited together with other examples in the International Corporate Accountability Roundtable, "Persisting Harm: Corporate Responsibility and Accountability for Human Trafficking and Slavery" (forthcoming, on file).)

[68] See www.ungpreporting.org. Early adopters include Unilever, Nestlé, H&M and Newmont.

[69] Right to an effective remedy for violations of international human rights law can be found in a number of international and regional instruments. See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights

Human Rights, clear guidance is set out on "access to remedy", delineating respective roles for both States and business.

57. Prior to that, principle 22 in the second pillar states that where businesses identify that they have caused or contributed to adverse human rights impacts, they should provide for or cooperate in their remediation through legitimate processes. Where businesses have not caused or contributed to harm but it is directly linked to their operations, products or services by a business relationship, they are encouraged to take a role in providing remediation. In terms of operational principles under the third pillar, the Guiding Principles on Business and Human Rights, call on companies to establish or to participate in effective operational-level grievance mechanisms for those adversely impacted by them, so that grievances can be addressed early and remediated directly (principle 29). Such mechanisms are typically administered by enterprises, alone or in collaboration with other relevant stakeholders. They can be important complements to wider stakeholder engagement and collective bargaining processes, but cannot substitute for either, and can also make it possible to prevent harm from compounding or escalating. To ensure their effectiveness, the Guiding Principles on Business and Human Rights state that the operational-level grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue (principle 31). There are already some good practice examples of operational-level grievance mechanisms.[70]

58. As part of its duty to protect against business-related human rights abuses, the State is required to take appropriate steps to ensure that those affected have access to effective remedy when abuses occur within their territory and/or jurisdiction and to reduce barriers that could lead to a denial of this access. In the Guiding Principles on Business and Human Rights, it is indicated that this is to be achieved primarily through State-based judicial mechanisms and non-judicial grievance mechanisms, which are complementary in nature (principles 25–27). States are also encouraged to consider ways to facilitate access to effective non-State based grievance mechanisms that can have the benefit of reduced costs, increased speed of access and transnational reach, where States may be more limited. These may be non-judicial business, industry or multi-stakeholder mechanisms; or they may be regional or international human rights bodies (see principle 28).

59. For victims of contemporary forms of slavery, including those in supply chains, remedies may include compensation, medical and psychological care, free legal aid and social services, effective measures aimed at the cessation of continuing violations and alternative livelihood support measures. However, the right to an effective remedy for many workers, in particular the most vulnerable in supply chains, remains largely elusive and redress for corporate human rights violations is hampered by many barriers, including the high costs of litigation and a lack of a free legal aid. Moreover, the victims, especially if not members of trade unions, may not be aware that their rights have been violated. In extreme instances, workers may be enslaved and physically unable to enforce their rights.[71]

Law and Serious Violations of International Humanitarian Law.

[70] See for instance, International Petroleum Industry Environmental Conservation Association for an example in the global oil and gas industry ("Operational level grievance mechanisms: good practice survey", www.ipieca.org/publication/operational-level-grievance-mechanisms-good-practice-survey).

[71] For a comprehensive account of barriers to access to remedies, see Gwynne Skinner and others, *The Third Pillar: access to judicial remedies for human rights violations by transnational businesses* (2013, International Corporate Accountability Roundtable). The report seeks to understand which barriers are most insurmountable for victims of abuses of human rights by transnational business and to provide recommendations for each of the jurisdictions examined regarding how the States can better fulfil their duty to reduce these barriers. On the right to an effective remedy, see also the OHCHR initiative on enhancing accountability and access to remedy in cases of business

60. Given the gravity of slavery and slavery-like practices as gross human rights violations, judicial remedies are a key form of securing accountability for business-related human rights abuses. Access to justice for victims in this context is, however, often constrained by legal rules limiting the liability of a corporation for human rights violations not directly arising from its business operations. This is a problem in global supply chains whereby the business enterprise sourcing the product is not directly implicated in the exploitation that occurs lower down the supply chain, but is complicit as a result of failing to comply with its human rights due diligence obligations. Also, vicarious liability rules prevent corporate liability for management conduct in many instances which arise in the disarticulation in the supply between the global retailer and the many small subcontractors at the lowest tier.

61. In the context of supply chains, a lack of extraterritorial jurisdiction affects access to remedies for contemporary forms of slavery and other human rights violations, which are committed outside the territory in which a business is domiciled. In this context, the United States Supreme Court held, for example, in *Kiobel v. Royal Dutch Petroleum, Co.*, that the presumption against the extraterritorial application of United States law applies to the Alien Tort Statute,[72] and this can only be overcome if the claim "touches and concerns" the territory of the United States "with sufficient force" to displace the presumption against extraterritorial application.

G. Some challenges and gaps to ensuring the accountability of States and businesses for contemporary forms of slavery in supply chains

62. Despite notable improvements in recent years, gaps in legal and regulatory protection for the human rights of victims of contemporary forms of slavery exist in a number of countries. This has a significant impact on enforcing corporate legal liability.[73] In many cases, States also lack an integrated approach to criminal, labour and human rights laws, which impedes law enforcement and prevents effective investigation and prosecution of abuses. Where the legislative framework does exist, in some instances this is affected by lengthy legal proceedings and corruption, including bribery, which means that access to remedy is slow and victims are reluctant to come forward as a result.

63. In other cases, some legal jurisdictions are part of the problem, exacerbating the vulnerability of workers to contemporary forms of slavery. This is the case in countries where laws tie migrant workers to specific employers, preventing them from leaving without the employer's authorization. In some countries, for example, certain categories of workers are not guaranteed their right to freedom of peaceful assembly and association and thus not allowed to form or join trade unions or hold office within them, which adds to their vulnerability.

64. It also remains a challenge for transnational businesses with complex supply chains to conduct human rights due diligence on all levels of their supply chains, particularly where they have no direct business relationship with subcontractors.[74] The same applies for

involvement in human rights abuses (www.ohchr.org/EN/Issues/Business/Pages/OHCHRstudyondomesticlawremedies.aspx), progress report of the United Nations High Commissioner for Human Rights on legal options and practical measures to improve access to remedy for victims of business-related human rights abuses (A/HRC/29/39) and A/HRC/17/35.

[72] Available at www.supremecourt.gov/opinions/12pdf/10-1491_l6gn.pdf.

[73] See International Corporate Accountability Roundtable, "Persisting Harm".

[74] In the commentary to principle 17 of the Guiding Principles on Business and Human Rights, it is acknowledged that, where businesses have large numbers of entities in their value chains it may be

labour supply chains, the informal economy and the production, harvesting or extraction that occurs at the commodities level of the global economy.

65. A key gap is the lack of research and data in identifying the exact scope and prevalence of contemporary forms of slavery in specific supply chains and related to particular commodities, as well as its prevalence in the informal sector, which could enable strengthened and targeted policy and normative response and practical strategies. More research and data is also needed on domestic supply chains.[75]

66. Global businesses have the capacity and resources to address, jointly with relevant stakeholders, the root causes of contemporary forms of slavery, particularly structural issues relating to discrimination, poverty and inequality and should use this leverage more prominently.[76] There is also the need for increased dialogue and cooperation among all stakeholders working on the issue of contemporary forms of slavery in supply chains, also within the international community, in order to combine their efforts to ensure its eradication, including in relation to the 2016 International Labour Conference general discussion on the issue of decent work in global supply chains.

IV. Conclusion and recommendations

67. **The present report provides an indication of some of the challenges in enforcing accountability of States and businesses for preventing, mitigating and redressing contemporary forms of slavery in supply chains. The framework emerging from the United Nations system has provided greater clarity on how to operationalize the responsibility of business to respect human rights, including through conducting human rights due diligence, and the obligations of States to address business-related human rights abuses. The passing of national laws, which reflect an increasing global concern with transparency, reporting and human rights due diligence obligations that add to the accountability tool belt, is to be applauded. So are the businesses' human rights policy commitments, although loopholes exist in terms of their enforcement, and the important role played in the combat against contemporary forms of slavery in supply chains by other stakeholders, including civil society actors, such as non-governmental organisations, trade unions, foundations and consumers, as well as international organizations and the media. While these developments are notable, important gaps still exist in terms of effective access to justice and adequate and prompt remediation for victims of contemporary forms of slavery in supply chains.**

68. **Against this backdrop, the Special Rapporteur wishes to make the following recommendations to States:**

(a) States should ratify all relevant international instruments prohibiting slavery and slavery-like practices, including the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29), align their domestic legislation with international

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unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. If so, business enterprises should identify general areas where the risk is most significant, whether due to certain suppliers' or clients' operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence.

[75] In this context it is noteworthy that the Freedom Fund has provided a grant to Focus on Labour Exploitation (FLEX) to develop a Modern Slavery Accountability Database, an online database of national laws and regulations on individual and corporate accountability for modern slavery.

[76] The Working Group on the issue of human rights and transnational corporations and other business enterprises, in its report, addressed the role business can play in the finalization of the proposed sustainable development goals (A/HRC/29/28).

standards, criminalize all contemporary forms of slavery and provide adequate penalties for violations;

(b) States should develop, enact and update a national action plan on business and human rights in accordance with the guidance provided by the Working Group on the issue of human rights and transnational corporations and other business enterprises. Measures outlined in the national action plan should take full advantage of the leverage home States have in order to effectively prevent, address and redress extraterritorial human rights harms of businesses domiciled in their territory and/or jurisdiction;

(c) To support effective implementation of domestic laws, States should strengthen their institutional frameworks and enforcement mechanisms across relevant structures, including labour inspectorates, the judiciary and prosecution, through provision of continued capacity-building, awareness-raising and adequate human and financial resources;

(d) In addition to adoption and effective enforcement of human rights and labour laws, such as those ensuring the right to freedom of peaceful assembly and association and providing for minimum labour standards, States bear a fundamental duty to address the preventive aspect of contemporary forms of slavery through tackling its root causes, including poverty, discrimination, stigmatization, inequality and social exclusion of groups most vulnerable to slavery and slavery-like practices, by adopting a human-rights based approach and incorporating a gender perspective;

(e) States must ensure that those affected by business-related human rights abuse, including victims of forced labour and other contemporary forms of slavery, have the right to an effective remedy by taking appropriate steps to ensure the effectiveness of judicial mechanisms, providing effective and appropriate non-judicial grievance mechanisms, facilitating access to effective non-State-based grievance mechanisms and reducing barriers that could deny access to remedy for victims;

(f) States are strongly encouraged to adopt effective legislation requiring transparency in supply chains, human rights due diligence throughout supply chains, public reporting and disclosures of businesses, as well as measures relating to procurement practices, and to guarantee its implementation;

(g) States should explicitly prohibit fraudulent and abusive recruitment practices that are one of the main causes of contemporary forms of slavery in supply chains and adopt measures to regulate recruitment;

(h) States should invest in research and collection and analysis of data on the scope and prevalence of contemporary forms of slavery in supply chains, specific commodities, sectors, the informal economy and in domestic production as the foundation for effective policy and strategy formulation by both public and private sector actors;

(i) Special attention of States should be given to the risk of contemporary forms of slavery in the informal economy, including by identifying at risk sectors and conducting effective labour inspections;

(j) States should consider different strategies to promote voluntary initiatives, especially multi-stakeholder public-private partnership platforms, which include Governments at all levels, civil society actors, including trade unions, business representatives and other stakeholders. These are crucial to effectively and holistically address contemporary forms of slavery in supply chains and can, inter alia, foster dialogue on policies to best tackle its root causes, provide an institutional framework to develop and implement supply chain strategies, grievance mechanisms and

remediation, advocacy on legal and public policy reform, as well as to promote certification and independent investigation. Community- and area-based approaches, which do not target a single crop or commodity, are a key form of a partnership.

69. In relation to businesses, the Special Rapporteur recommends the following:

(a) Businesses should adopt human rights policy commitments and conduct continuous human rights due diligence in line with the framework established in the Guiding Principles on Business and Human Rights, and include the findings of the latter in their policies and procedures aimed at eliminating contemporary forms of slavery from supply chains;

(b) Human rights policy commitments and supporting policies and procedures should be complemented by effective implementation which moves beyond auditing, and includes third party independent monitoring, proactive investigations, random unannounced assessments that prioritize confidential consultation with workers and strategies linked to prevention of unethical recruitment in supply chains;

(c) All businesses' human rights policies and procedures and the systems to implement them should integrate measures reaching beyond the first tier in supply chains and include clear guidelines and indicators to assist those operating at the lower tiers and in the informal economy to identify human rights violations, including contemporary forms of slavery, and ensure compliance with international human rights standards;

(d) Transparency in supply chains is important for ensuring corporate accountability for human rights abuse. Businesses should publicly report on action undertaken to address their human rights impacts, including preventive and corrective measures, and share lessons learned and strategies for improvement;

(e) Businesses should provide for or cooperate in remediation by establishing or participating in an operational-level grievance mechanism, in accordance with the Guiding Principles on Business and Human Rights, and cooperate with State-based judicial and non-judicial grievance mechanisms. The approach adopted by businesses in providing for a timely and effective remedy should be community-based and inclusive of, for example, public and/or non-governmental service providers with expertise in working with victims of contemporary forms of slavery;

(f) Gaps in national legislation and underdeveloped regulatory infrastructure can pose significant risks for contemporary forms of slavery in supply chains. To address this, businesses, working in partnership with business peers and other stakeholders or though representative industry and employer organizations, should engage public policy actors and regulators to encourage adoption of a relevant legal framework and effective law enforcement. Businesses, together with other stakeholders, also have an important role to play in addressing the root causes of contemporary forms of slavery;

(g) Business should engage in capacity-building to ensure management and staff, as well as the relevant business partner, awareness-raising on the nature and risks of contemporary forms of slavery in supply chains and the strategies for its eradication.

70. The Special Rapporteur would like to make the following recommendations to other stakeholders:

(a) International organizations and the donor community have an important role to play in providing a forum for stakeholder dialogue and partnership to address

contemporary forms of slavery in supply chains and to empower communities. They are encouraged to assist the States and other actors, if needed, by providing technical assistance for research, capacity-building, remediation and for addressing root causes through human rights-based development and poverty reduction programmes;

(b) Investors should use their leverage to exercise pressure on businesses to respect human rights, raise awareness of the risks of slavery and slavery-like practices in supply chains, build capacity, invest in research and data collection and analysis, and ensure that businesses establish relationships with other relevant actors, including through multi-stakeholder platforms;

(c) Consumers should play a more active role in scrutinizing the origin of products and promoting ethical sourcing and other fair trade initiatives;

(d) Trade unions and their confederations have a key role to play in ensuring that the human rights of workers are complied with by States and businesses;

(e) Other civil society actors, including foundations, and academia, and the media should continue to conduct research, investigate and report on human rights violations in supply chains, highlight areas of non-compliance with international human rights norms and standards and call for an effective and prompt action by those responsible.